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August 29, 2016

Objection Reviewing Officer
Intermountain Region USFS
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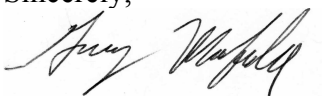
RE: OBJECTION to the Draft Decision Notice (DDN) for the Currant-Ellison Watershed Restoration Project

Pursuant to 36 CFR Part 218, Wilderness Watch objects to the Draft Decision Notice (DDN) issued by Forest Supervisor William Dunkelberger for the Currant-Ellison Watershed Restoration Project

Pursuant to Part 218, Wilderness Watch is the lead objector. Contact Person: Gary Macfarlane. The full objection, attachments and references are included on the enclosed cd. The version sent via email includes this cover letter and the full objection.

Wilderness Watch filed comments on the scoping letter. If you would like to discuss the issues raised in our objection with us, we would welcome the opportunity to meet via phone conference.

Sincerely,



Gary Macfarlane
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The Draft Decision and EA Violate the Wilderness Act and NEPA and the EA Inadequately Analyzes Impacts to Wilderness

In our comments we noted:

The Currant Ellison project could allow a level of manipulation and trammeling of the Currant Mountain, White Pine Range, and Red Mountain Wildernesses not permitted by the 1964 Wilderness Act. (NOTE: no fire is proposed for the Bald Mountain Wilderness). Wilderness Watch supports allowing lightning-caused fire to play its role in these four Wildernesses but the Forest Service plan proposes to significantly manipulate Wilderness in ways that will destroy the area's wilderness character, in violation of the mandate of the 1964 Wilderness Act. The proposed action would apparently allow human-ignited fire in three of these Wildernesses. It is unclear whether human-ignited fire would be allowed to enter the Bald Mountain Wilderness.

The 1964 Wilderness Act governs the administration and stewardship of the National Wilderness Preservation System. This visionary law defines Wilderness in part as "an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain." Untrammeled means unmanipulated or unconfined, where humans do not dominate or impose human will on the landscape. Wilderness designation brings a special protection for Wildernesses, and requires the federal land management agencies like the Forest Service to not manipulate or dominate the Wilderness. Rather, federal agencies are required by the Wilderness Act to preserve the wilderness character of these Wildernesses and to protect their wildness. This mandate is reflected in the epigram written by the drafter of the Wilderness Act, Howard Zahniser who wrote, "With regard to areas of wilderness, we should be guardians not gardeners."

This fundamental tenet of wilderness stewardship was reiterated in a program review initiated by the four federal agencies and conducted by the Pinchot Institute for Conservation in 2001. The purpose of the study was to examine the critical management issues facing Wilderness. One of the eight "fundamental principles" for stewardship emphasized the need to preserve the wildness in Wilderness. As the Pinchot report stated, "Protection of the natural wild, where nature is not controlled, is critical in ensuring that a place is wilderness…. Since wild is a fundamental characteristic of wilderness that is not attainable elsewhere, if there is a choice between emphasizing naturalness and wildness, stewards should err on the side of wildness."

The proposed action, even where agency-ignited fires are allowed to burn into Wilderness, ignores any impacts to the untrammeled, unmanipulated wilderness character of the four Wildernesses. Even if agency-ignited fire may bring some perceived ecological or species-specific benefits, human-ignited fire in Wilderness is a significant manipulation or trammeling of the area. This is true whether fire is ignited in the Wilderness or just outside with the intent it would burn into the Wilderness. The Forest Service plan has the potential to turn these Wildernesses from wild landscapes into a heavily manipulated, managed forest and rangeland. Allowing the Wilderness to evolve of its own accord and letting lightning-caused fire play its natural role is a much better alternative.

Indeed, the scoping letter recognizes the role natural ignitions could play, though they are apparently relegated to the third choice after ground ignition and aerial ignition. Natural fire should be allowed to play its role in wilderness and human-ignited fires, either in Wilderness or adjacent to Wilderness with the intent of going into Wilderness should not be allowed.

The proposals to create fuel breaks raise several questions. For example, there would be fuel breaks constructed along the boundary of the Bald Mountain Wilderness, along a road, which parallels the boundary, even though no burning is proposed in this unit. Is this being done to prevent agency-ignited fire from entering the Bald Mountain Wilderness? If so why isn't that being done for the all other Wildernesses if the goal is to allow Wilderness to be defined by natural rather than human-ignited fire? If it is being done to prevent natural fire from exiting Wilderness, why have non-wilderness fire ignition if the agency is so certain that natural fire will play a role in these areas?

Similarly, how wide are the fuel breaks and what guarantees are there that they won't go into Wilderness? Can't the proposed human-ignited fires outside of the Wildernesses be conducted so that no fuel breaks are needed to prevent fire from either entering the Wildernesses or damaging other resources? Does the agency have a natural fire program for this mountain range? If not, why not, given the apparent desire of the agency to want fire on the landscape, including in Wilderness, and the apparent lack of conflicting resource values that would preclude natural fire?

Rather, the proposal would put into place an unnatural fire regime with ignitions in the spring, rather than summer and fall when fires are more likely to naturally occur. These projects could go on in perpetuity.

Two factors deserve consideration. The first is whether there is a threat to resources outside of the Wildernesses and if this project would reduce that threat. The second is an analysis of the issues involved, including the first, to see if in fact, agency-ignited fire is allowed by the Wilderness Act and its subsequent regulations.

The Wilderness Act allows management actions to be taken in the control of fire, insects and disease (Section 4(d)(1)). This allowance is not without limitation, however. In the case of controlling insects, for example, the Courts have held that controlling insects within Wilderness to protect forests outside Wilderness (an "outside interest") is inappropriate unless the agency shows that the "outside interest" has taken equally intensive efforts to control insects on non-wilderness lands (see Sierra Club v. Lyng, Civ. No. 85-2226). Also, Forest Service policy prohibits the use of management-ignited fire for the purpose of enhancing wildlife habitat (FSM 2324.22.7).

In response to our previous comments, the Forest Service acknowledges that "[t]he proposed action with regards to prescribed fire very much is a trammeling" DDN at 22, but then discounts this harm by stating, "but so is suppression," *id*. The Forest Service continues, "By allowing suppression of fire to continue and then leave wilderness to operate on its own accord is both

hypocritical and detrimental to the overall vitality and viability of the wilderness area into the future." DDN at 23. Such a statement ignores an available remedy—discontinuing most suppression efforts in wilderness and allowing fire to play its natural role—and fundamentally misunderstands the purpose of wilderness and the Wilderness Act. One cannot reverse trammeling through more trammeling. Howard Zahniser, drafter of the Wilderness Act, stated that "[a] wilderness is an area where the earth and its community of life are untrammeled by man. (Untrammeled – not untrampled – untrammeled, meaning free, unbound, unhampered, unchecked, having the freedom of the wilderness.)." While the Forest Service is rationalizing ecological intervention based on poor past management practices and on other human-induced changes, "these threats do not justify further interventions into the natural processes within wilderness areas. These projects, whose purposes are to restore (or redirect) natural processes through the exercise of human agency, are precisely the intrusions of human culture that the Wilderness Act meant to exclude from these special places." Attachment 1, Sean Kammer, *Coming to Terms with Wilderness: The Wilderness Act and the Problem of Wildlife Restoration*, 43 Environmental Law 83, 86 (2013).

This does not mean that the Forest Service must sit idly by and do nothing. The Forest Service notes that much of the active fire management, including suppression and controlled burns, is needed due to concerns over invasive annual grasses and other noxious weeds, including cheatgrass. *See e.g*. DDN at 22, 24. The Forest Service notes that changes to the landscape have resulted from over 100 years of fire suppression, climate change, vegetation changes and other factors such as livestock grazing, *id*., but then expresses concern over allowing natural fire to occur because "[a] previous [natural] fire did great environmental damage within this particular wilderness a number of years ago [when c]heat grass and other noxious weed species [] invaded the old fire scar." DDN at 22. But, the fire did not introduce cheat grass and other noxious weed species, and the Forest Service has the ability to manage the types of activities that do introduce noxious seeds to the wilderness. However, instead of restricting the types of activities that introduce noxious weeds in the first place (e.g. livestock grazing and pack stock use, see Attachment 2, Reisner, et al., 2013), the Forest Service intends to continue artificially suppressing and manipulating fire regimes. The Forest Service has the ability to stop its history of fire suppression and manage livestock grazing—a primary contributor to the spread of noxious weeds, including cheatgrass—and neither of these actions would offend the Wilderness Act. Yet, the Forest Service wants to manipulate the landscape faster than natural fire intervals would allow, DDN at 23, and the Forest Service declined to analyze the reduction of livestock grazing, DDN at 5.

Further, changes to the landscape from climate change are inevitable, and the Forest Service's ongoing attempts to resist those changes through active manipulation of the wilderness is at odds with the Wilderness Act and the Forest Service's own management guidance. Vegetation changes, fire interval and intensity, and wildlife disbursement attributable to a changing climate cannot logically represent degradation of wilderness character. *See* 36 C.F.R. § 293.2(a) (dictating that, in wilderness, "[n]atural ecological succession will be allowed to operate freely to the extent feasible"). The Forest Service manual directs the Forest Service to "[p]rovide an environment where the forces of natural selection and survival rather than human actions determine which and what numbers of wildlife species will exist." FSM 2323.31; *see also* FSM 2320.2 (Forest Service objective to "[m]aintain wilderness in such a manner that ecosystems are

unaffected by human manipulation and influences so that plants and animals develop and respond to natural forces."). Thus, if there are actions the Forest Service may take to reduce impacts to the wilderness without manipulating natural processes (e.g. livestock closures and packstock reductions), it must take those measures and allow natural processes to take it from there.

The Forest Service provides no clear explanation for why this active manipulation (agency-ignited fire) is necessary to administer the Wilderness. While the EA seems to lead the reader to conclude the analysis is based on the premise that the agency will have to fight fires in the Wilderness, the EA itself is full of contradictions that render the analysis inadequate. For example, one alternative that would not approve agency ignited fire in Wilderness states:

> *Under this alternative prescribed fire and the identified exclosures within designated wilderness will not occur. All of the proposed activities outside of designated wilderness will move forward and will benefit the resources within the project area boundary. However, within designated wilderness resource conditions will continue to increase in departure from desired conditions as prescribed fire will not be approved. Instead management will have to make decisions based upon whether or not a naturally occurring wildfire occurs or doesn't. Wildlife resources within these wilderness areas will suffer as a result due to the habitat they rely upon being further degraded by drought, lack of fire and other pressures from permitted livestock and wild horses. Springs identified for treatment activities will further degrade from the impacts being inflicted upon them. As a result the wilderness character of these areas will be degraded resulting in negative experiences for the visiting public to these areas, as well as detrimental impacts to the long term sustainability of the wilderness resource into the future. ...*

So, there will be a "lack of fire" if the proposed action is not selected even though the EA admits, "Instead management will have to make decisions based upon whether or not a naturally occurring wildfire occurs or doesn't." Even earlier the EA admits, "During the summer of 2013, the White Pine Fire (Currant Mtn. Wilderness) was started from a lightning strike. This fire was allowed to burn with some suppression activities authorized to keep the fire located in the high elevation fuels." Which is it, will fire be suppressed or not? A reading of the EA regarding past wildfire contradicts the assertion that naturally ignited fire can't be allowed to play its role. Even if the Wilderness Act allowed overt trammeling in the name of some faulty view of the primacy of naturalness, the EA, because of its internal contradictions, still fails to demonstrate whether this overt trammeling is indeed necessary. Rather, the EA cynically sets up a straw man argument that natural fire is undesirable or can't be allowed to burn. That is unsupported by the facts and the agency's own past actions.

In any case, the idea of desired conditions is fundamentally at odds with Wilderness, which is about natural processes. Therefore, any supposed departure from an end goal is not applicable in this case.

The EA also states:

> *The primary proposed action treatment that has the potential to do severe damage to wilderness resources is prescribed fire. Implementing prescribed fire within a designated wilderness doesn't necessarily mean outcomes will be negative. However, the act of management ignited fire (prescribed fire) is considered a trammeling of the wilderness character. Taken individually, the attributes of wilderness character can all be negatively affected by man's actions. Taken holistically, which is mandated by the Wilderness Act, a trammeling action can be taken to benefit the remaining attributes. Implementing management ignited fire under very thought-out and planned prescriptions will be key to successful outcomes. Fire has a role to play within these landscapes and has been suppressed (trammeled) for too long. The remaining proposed action treatment activities will all benefit wilderness resources as they are small in scale and seek to remedy impacts from the past, as well as, ongoing non-conforming use impacts associated with mining and grazing.*

The Wilderness Act isn't internally inconsistent, as the EA seems to suggest. The canons of statutory construct dictate that naturalness be in harmony with wildness (untrammeled). *United States v. Powell*, 6 F.3d 611, 614 (9th Cir. 1993) ("It is a basic rule of statutory construction that one provision should not be interpreted in a way which is internally contradictory or that renders other provisions of the same statute inconsistent or meaningless"); *see also Wilderness Society*, 353 F.3d at 60 ("a fundamental canon that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme"); *Kmart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) ("In ascertaining the plain meaning of [a] statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole."); *United States v. Lewis*, 67 F.3d 225, 228-29 (9th Cir. 1995) ("Particular phrases must be construed in light of the overall purpose and structure of the whole statutory scheme."). Thus, what is natural for the area necessarily flows from what is untrammeled. Otherwise, the default position will always be to trammel Wilderness to comport with a land manager's notion of what is natural, even though various complicated factors—many of which we do not fully understand and cannot control—are always necessarily at play in shifting naturalness. Wilderness is "in contrast" to areas where our actions and decisions dominate the landscape. Nature should roll the dice in Wilderness, not managers. This above paragraph from the EA turns the Wilderness Act on its head[1].

Further, there is no guarantee that the Forest Service will allow fire to play its role in the Wilderness after this manipulation. Will the agency engage in further trammeling in the future because vegetation grows and must be periodically treated in Wilderness as per agency dogma? Will this be a one-time event? Answers to these fundamental a questions can't be derived from the EA.

The Forest Service has not demonstrated that ecosystem modification or modification of natural processes is "[t]he minimum requirement for administering the area as wilderness" or that the

[1] Fundamentally, Wilderness is not about end results but about process.

proposed action would restore biological integrity, diversity, or environmental health of the Wildernesses[2]. The only attempt at a wilderness-based justification for the otherwise prohibited activities within wilderness is the agency's allegation that these actions will somehow serve to alleviate "vegetation departure" (see tables 45 through 49) and a paragraph on page 196. With the possible exception of pinyon-juniper, there is no obvious scientific basis for this analysis anywhere in the EA or its bibliography.

Further, there is no analysis of the impacts of motorized or mechanical equipment used in igniting fire in Wilderness. For example, a heli-torch may be used, but, in response to our comments, such a decision would be deferred to the MRDG process (see DDN, pages 22 and 27).

Of much concern, the Forest Service reduces the Wilderness Act to a procedural statute—something akin to NEPA. The Forest Service states, "The 1964 Wilderness Act does not prohibit management activities within a wilderness area. We are required to follow specific processes and procedures and must disclose the potential effects of this project. Additionally, specific design features and mitigation measures will be included to minimize the potential effects on wilderness areas." DDN at 24. This is simply not accurate. The Wilderness Act is a substantive statute with a substantive purpose, 16 U.S.C. 1131(a), and substantive prohibitions, 16 U.S.C. 1133(c). The Courts are very clear that the Wilderness Act is not a procedural statute. "The Wilderness Act 'emphasizes outcome (wilderness preservation) over procedure' and has been described to be 'as close to an outcome-oriented piece of environmental legislation as exists."' *Wilderness Watch v. Iwamoto*, 853 F.Supp.2d 1063, 1071 (W.D. Wash. 2012) (quoting *High Sierra Hikers Ass'n v. U.S. Forest Serv.*, 436 F.Supp.2d 1117, 1138 (E.D. Cal. 2006)). "[T]he Wilderness Act is a specific, protective statute militating against [various forms of] intrusions." *Olympic Park Associates*, No. C04-5732FDB, 2005 WL 1871114, at *7 (W.D. Wash. Aug 1, 2005). Accordingly, the Forest Service must ensure that any management action it is taking is substantively compatible with the Wilderness Act.

Page 196 sheds no further light on an inadequate EA. Rather, it is a jumble of confusion and contradiction. For example, "Fuels treatments can occur in roadless areas. Prescribed fires can occur in wilderness areas under the right conditions. However, these types of activities occurring on adjacent lands can impact all of the characteristics of inventoried roadless areas and wilderness areas." This seems to say it is fine to manipulate inside Wilderness, but not outside of Wilderness. That is an odd conclusion.

This same paragraph alleges, "Wildfire suppression has occurred on the USFS administered lands for over a century." It further alleges that "as fire cannot be controlled 100% of the time and can explode into a catastrophic fire that does more damage than good." It would seem the EA is suggesting that fire suppression has been effective for over a century and that it has caused a build-up of fuel that will inevitably lead to catastrophic fires. This fuel-centric view of fire behavior is not supported by the latest science over most vegetative types of the West. Rather,

[2] While this objection is focused on agency-ignited fire, page 194 notes, "The remaining proposed action treatment activities will all benefit wilderness resources as they are small in scale and seek to remedy impacts from the past, as well as, ongoing non-conforming use impacts associated with mining and grazing." Nowhere in the EA are changes to grazing evaluated as a way to meet the minimum requirement.

large stand-replacing fires are driven by climatic events and vegetation treatments (logging, thinning, prescribed fire) are often ineffective, and in some cases counterproductive, to large fire spread (see Attachments 3 through 11).

Further, while fire suppression may have been practiced for over a century, that doesn't mean it was successful or has led to the EA's alleged vegetation departure. Certainly, fires over much of the West in 1910, 1934, 1988, 1994, and 2015, to name a few, were not effectively suppressed. The latest fire science shows that acreage burned is dependent on climatic factors. The years of apparent effective fire suppression--1950 to the mid 1980s--happen to coincide with a wetter-than-normal period over most of the West. These years, in general, had few large fires. Rather than fire suppression being effective, it would appear that the fires, which were suppressed in that time period probably, would have not have burned much acreage anyway. Most acreage burned comes from a few large fires.

Thus, the fire regime one infers from the EA--an equilibrium view of high frequency low intensity fires that cleaned out bush--is not likely the kind of fire regimes that existed prior to settlement in the Wildernesses in the project area. Indeed, it may exist in only certain forest types, like the ponderosa forests in Arizona and New Mexico, and even that has been called into question. Regardless, the EA has no clear analysis fire ecology or of current or presumably past fire regimes in the various vegetation types of the project area, with the possible exception of pinyon-juniper.

Many forest types in the West evolved with rather infrequent, stochastic stand-replacing fire. These fires, though entirely natural, are what the EA wishes to avoid, calling them catastrophic and incorrectly implies they are unnatural. They do burn hot, but they help long-term watershed function (recruitment of woody material in streams and on the uplands from the boles of trees killed by fire), provide habitat for cavity-nesting birds such as certain species of woodpeckers, and create a mosaic of habitats across the landscape. Further, these forest types have been little effected by fire suppression (if indeed it has been successful), because of the relatively longer periods of time between fires and the fact fires only burn under certain conditions. In sum, the EA provides no scientific background as to fire ecology in the project area, with the possible exception of pinyon-juniper.

The idea of 100% control on page 196 of the EA is completely at odds with Wilderness as an "untrammeled" place. The desire to control natural processes, as expressed in the EA, is antithetical to Wilderness. Add to that the rapidly changing nature of our forests from climate change, and it becomes nearly impossible to discern a historical "natural" baseline point from which we should gauge "naturalness." This is why Howard Zahniser's foresight is so important. He focused, primarily, on the "untrammeled" character of wilderness in the Wilderness Act knowing that what is "natural" for that area will necessarily flow from what is "untrammeled." The uncontrolled, unmanipulated processes in wilderness create the state of naturalness for that area. This is important because this provides us with a baseline from which to measure our management actions outside of wilderness. If we start managing wilderness the same way we manage lands outside of wilderness, through active manipulation, we lose the untrammeled baseline and we thus lose what is "natural" for that area at that point in time.

Regarding pinyon-juniper, we referenced a scientific paper in our comments and provided the agency with a copy of it. The response to comments dismissed rigorous science as a "viewpoint" without directly referring to or providing any evidence to the contrary. The EA does not engage in any analysis of the science it supports versus the scientific research of Dr. Lanner. Further, other research supports Dr. Lanner regarding pinyon-juniper. The attached research also indicates pinyon-juniper forests naturally had stand-replacing fires. Included is a paper from the Forest Service itself (see Attachments 12 through 14). The EA is premised on outdated science that maintains pinyon-juniper forests are increasing in density and expanding because the forests, in pre-settlement times, used to see high frequency/low intensity fire that kept them isolated to more rocky outcrops. The attachments refute that understanding of pinyon-juniper forests.

At the very least, the EA fails to look at considerable scientific evidence that refutes its assumptions and is therefore inadequate. At worst, the EA is mired in outdated science and an inaccurate view of pinyon-juniper forests and fire ecology.

Lastly, the EA does not map or specifcy where agency- ignited fire would be lit or occur in Wilderness. No MRDG has yet been produced for any prescribed fire in Wilderness, and the EA defers specifics to that process. As such, the EA is at best, a programmatic document that does not analyze the site-specific impacts of this proposal. Therefore it violates NEPA.

Remedy:

1- Allow natural fire to play its role in Wilderness and remove the agency-ignited fire in Wilderness from this proposal.

2- Place restrictions on human uses that are exacerbating conditions of concern for the Forest Service. These restrictions may include grazing and packstock reductions.

3- Withdraw the current proposal and prepare an adequate NEPA document, most likely an EIS.

The Draft Decision and EA are Unclear as to the Other Proposals in Wilderness

The EA and draft Decision are not clear on a few key points in Wilderness. The EA on page 187 states there will be, "cutting of vegetation (primarily pinyon-juniper) within a 5 acre area around identified springs" yet the Draft DN says on page 25, "There are no cutting units within wilderness in this project." It is our understanding, from talking with the District Ranger that no cutting will occur in Wilderness. What is accurate?

Furthermore, the EA notes on page 187, "Woody vegetation from the area will be used to create a barrier around the spring source in order to keep the grazing animals off of it." Page 190 notes, "Using natural materials (cut pinyon/juniper or fir trees) to exclude grazing animals from the spring source in the Mustang Spring and White River headwaters will greatly improve water quantity and quality in the entire watershed." We understand, from the District Ranger, that any barriers or fences would be built from materials obtained outside of the Wilderness. What is accurate?

The EA is explicit that no motorized use would be used for the route decommissioning in Wilderness. However, it is not explicit regarding the spring enclosures. We understand from the District Ranger no motorized use would occur in Wilderness for that proposal. Regardless, the EA has no analysis on the use of motor vehicles for these proposals.

Lastly, the EA proposes mine entrance reclamation in Wilderness yet our understanding, from speaking with the District Ranger, is there are none in the Wilderness. Our comments asked that maps be clearly shown in the EA depicting where action would occur in Wilderness and the Forest Service concurred. Regardless, the EA has no analysis on the use of motor vehicles or structures for the mine closures in Wilderness, if they are indeed proposed. Further, the EA does not determine which sites would be closed off by gates, foam or by use of explosives. Please clarify thess inconsistencies.

Remedy:

1- Clarify that there are no mine closures or in the Wilderness.

2- If the above is not the case, prepare a new NEPA document that identifies and analyzes the locations and the specific methods of closures in each specific site and the impacts to Wilderness from each action.

3- Clarify that there would be no motorized use, exclosure materials would be obtained out of the Wilderness, and no cutting inside the Wilderness for the two spring projects.

4- If the above is not the case, prepare a new NEPA document that adequately analyzes the impacts of motor vehicles and cutting trees inside the Wilderness.